

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1639

Introduced by Assembly Members Nava, Bass, and Lieu
(Coauthor: Assembly Member Monning)
(Coauthor: Senator DeSaulnier)

January 11, 2010

An act to amend Section 2923.5 of, and to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1639, as amended, Nava. ~~Mediated~~ *Facilitated* Mortgage Workout Program.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor, among other acts required prior to exercising a power of sale in a nonjudicial foreclosure proceeding.

This bill would establish, *contingent upon receipt of federal funding for all costs, and only until January 1, 2014*, the ~~Mediated~~ *Facilitated* Mortgage Workout ~~(MMW)~~ *(FMW)* Program. The program would be a process whereby borrowers and lenders would engage in ~~mediation~~ *conciliation sessions* for purposes of developing a loan modification

plan. *These provisions would apply, except as specified, if the loan originated prior to January 1, 2009, the loan is the 1st mortgage or deed of trust secured by the property, the property is occupied by the borrower as the borrower's principal residence, and the unpaid principal balance is not more than \$729,750.* The program would require that specified information regarding the ~~MMW~~ FMW Program be included with the notice of default sent to a borrower, as defined, on a loan secured by residential real property of one- to 4-family dwelling units that is the primary residence of the borrower, as specified. The bill would require that this additional notice be recorded in the office of the county recorder. By expanding the duties of county recorders, the bill would impose a state-mandated local program.

The bill would provide for an administrator of the program who would be appointed by the Governor and confirmed by the Senate. The program would require a borrower who elects to participate in the program to complete a specified form and return the form to the administrator of the program not later than 30 calendar days after receiving the notice of default. The program would require the borrower to submit other information to the administrator within ~~10~~ 15 days of requesting to participate in the program, including tax returns, income verification, ~~and a specified deposit of funds, and a letter describing the borrower's financial hardship, as specified.~~ The program would require a borrower who elects to participate in the program to deposit with the administrator 50% of the current mortgage payment each month during participation in the ~~MMW~~ FMW Program. The bill would also prohibit a mortgagee, trustee, beneficiary, or authorized agent from reporting negative credit information to a credit reporting agency about a borrower who has completed the ~~MMW~~ FMW Program and accepted a mortgage loan modification. The bill would impose various administrative fees, and a specified minimum deposit, payable by the mortgagee, trustee, beneficiary, or authorized agent, or by the borrower, as specified, who ~~participate~~ *participates* in the ~~MMW~~ FMW Program.

The bill would also provide that the timelines set forth in the provision governing the exercise of the power of sale, as specified, would be suspended until the completion of the program, as specified.

The bill would require the administrator of the program, among other duties, to implement rules and standards for selecting qualified ~~mediators~~ *neutral conciliation officers* and to develop standards for forms and reports required to implement the program. The bill would also require the administrator, upon receipt of a borrower's form whereby he or she

elects to participate in the program, to ~~randomly appoint~~ *nominate* an individual to serve as ~~mediator~~ *a neutral conciliation officer* from a list of qualified ~~mediators~~ *neutral conciliation officers* in the county in which the property is located. The bill would establish the compensation for a ~~mediator~~ *neutral conciliation officer* who provides his or her services to the program and require a ~~mediator~~ *neutral conciliation officer* to use reasonable efforts to ensure that each ~~MMW FMW~~ Program is completed within 60 calendar days of the ~~mediator's~~ *neutral conciliation officer's appointment nomination*. The bill would require the ~~mediator~~ *neutral conciliation officer* to prepare a final report, as specified. The bill would also require, only until January 1, 2015, the administrator to report quarterly to the Legislature regarding the ~~MMW FMW~~ Program, as specified. The bill would also require each mortgagee, trustee, beneficiary, or authorized agent participating in the program to post specified data about its loans on its Internet Web site.

These provisions would become operative only upon the issuance of a notice from the administrator to the Governor and specified other legislative leaders, and the posting of the notice on an Internet Web site, declaring that the administrator has the capacity to make the program available to any borrower in every county who desires to participate.

The bill would also make related and technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:

3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph

1 paragraphs (2) and (3) or 30 days after satisfying the due diligence
2 requirements as described in subdivision ~~(g)~~ (f).

3 (2) (A) *Except as provided under subdivisions (c) and (d) of*
4 *Section 2946.1, a mortgagee, trustee, beneficiary, or authorized*
5 *agent shall inform the borrower, via certified mail accompanying*
6 *a notice of delinquency, that the borrower may request to*
7 *participate in the Facilitated Mortgage Workout Program under*
8 *Article 1.7 (commencing with Section 2946). The contents of this*
9 *notice and accompanying documents shall comply with the*
10 *requirements of Section 2946.3.*

11 (B) (i) *A borrower shall have 30 days from receipt of the notice*
12 *to request to participate in the Facilitated Mortgage Workout*
13 *Program.*

14 (ii) *If a borrower chooses to participate in the Facilitated*
15 *Mortgage Workout Program, the requirements in paragraph (3)*
16 *shall be deemed to be completed.*

17 (iii) *A notice of default may not be filed while the borrower*
18 *participates in the Facilitated Mortgage Workout Program under*
19 *Article 1.7 (commencing with Section 2946).*

20 ~~(2)~~

21 (3) A mortgagee, trustee, beneficiary, or authorized agent shall
22 contact the borrower in person or by telephone in order to assess
23 the borrower's financial situation and explore options for the
24 borrower to avoid foreclosure. During the initial contact, the
25 mortgagee, trustee, beneficiary, or authorized agent shall advise
26 the borrower that he or she has the right to request a subsequent
27 meeting and, if requested, the mortgagee, trustee, beneficiary, or
28 authorized agent shall schedule the meeting to occur within 14
29 days. The assessment of the borrower's financial situation and
30 discussion of options may occur during the first contact, or at the
31 subsequent meeting scheduled for that purpose. In either case, the
32 borrower shall be provided the toll-free telephone number made
33 available by the United States Department of Housing and Urban
34 Development (HUD) to find a HUD-certified housing counseling
35 agency. Any meeting may occur telephonically.

36 (b) A notice of default filed pursuant to Section 2924 shall
37 include a declaration that the mortgagee, trustee, beneficiary, or
38 authorized agent has contacted the borrower, has tried with due
39 diligence to contact the borrower as required by this section, or
40 that no contact was required pursuant to subdivision ~~(h)~~ (g).

1 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
2 already filed the notice of default prior to the enactment of this
3 section and did not subsequently file a notice of rescission, then
4 the mortgagee, trustee, beneficiary, or authorized agent shall, as
5 part of the notice of sale filed pursuant to Section 2924f, include
6 a declaration that either:

7 (1) States that the borrower was contacted to assess the
8 borrower's financial situation and to explore options for the
9 borrower to avoid foreclosure.

10 (2) Lists the efforts made, if any, to contact the borrower in the
11 event no contact was made.

12 (d) A mortgagee's, *trustee's*, beneficiary's, or authorized agent's
13 loss mitigation personnel may participate by telephone during any
14 contact required by this section.

15 ~~(e) For purposes of this section, a "borrower" shall include a~~
16 ~~mortgagor or trustor.~~

17 ~~(f)~~

18 (e) A borrower may designate, with consent given in writing,
19 a HUD-certified housing counseling agency, attorney, or other
20 advisor to discuss with the mortgagee, *trustee*, beneficiary, or
21 authorized agent, on the borrower's behalf, the ~~borrowers~~
22 *borrower's* financial situation and options for the borrower to
23 avoid foreclosure. That contact made at the direction of the
24 borrower shall satisfy the contact requirements of paragraph (2)
25 of subdivision (a). Any loan modification or workout plan offered
26 at the meeting by the mortgagee, *trustee*, beneficiary, or authorized
27 agent is subject to approval by the borrower.

28 ~~(g)~~

29 (f) A notice of default may be filed pursuant to Section 2924
30 when a mortgagee, *trustee*, beneficiary, or authorized agent has
31 not contacted a borrower as required by paragraph (2) of
32 subdivision (a) provided that the failure to contact the borrower
33 occurred despite the due diligence of the mortgagee, *trustee*,
34 beneficiary, or authorized agent. For purposes of this section, "due
35 diligence" shall require and mean all of the following:

36 (1) A mortgagee, *trustee*, beneficiary, or authorized agent shall
37 first attempt to contact a borrower by sending a first-class letter
38 that includes the toll-free telephone number made available by
39 HUD to find a HUD-certified housing counseling agency.

1 (2) (A) After the letter has been sent, the mortgagee, *trustee*,
2 beneficiary, or authorized agent shall attempt to contact the
3 borrower by telephone at least three times at different hours and
4 on different days. Telephone calls shall be made to the primary
5 telephone number on file.

6 (B) A mortgagee, *trustee*, beneficiary, or authorized agent may
7 attempt to contact a borrower using an automated system to dial
8 borrowers, provided that, if the telephone call is answered, the call
9 is connected to a live representative of the mortgagee, *trustee*,
10 beneficiary, or authorized agent.

11 (C) A mortgagee, *trustee*, beneficiary, or authorized agent
12 satisfies the telephone contact requirements of this paragraph if it
13 determines, after attempting contact pursuant to this paragraph,
14 that the borrower's primary telephone number and secondary
15 telephone number or numbers on file, if any, have been
16 disconnected.

17 (3) If the borrower does not respond within two weeks after the
18 telephone call requirements of paragraph (2) have been satisfied,
19 the mortgagee, *trustee*, beneficiary, or authorized agent shall then
20 send a certified letter, with return receipt requested.

21 (4) The mortgagee, *trustee*, beneficiary, or authorized agent
22 shall provide a means for the borrower to contact it in a timely
23 manner, including a toll-free telephone number that will provide
24 access to a live representative during business hours.

25 (5) The mortgagee, *trustee*, beneficiary, or authorized agent has
26 posted a prominent link on the homepage of its Internet Web site,
27 if any, to the following information:

28 (A) Options that may be available to borrowers who are unable
29 to afford their mortgage payments and who wish to avoid
30 foreclosure, and instructions to borrowers advising them on steps
31 to take to explore those options.

32 (B) A list of financial documents borrowers should collect and
33 be prepared to present to the mortgagee, *trustee*, beneficiary, or
34 authorized agent when discussing options for avoiding foreclosure.

35 (C) A toll-free telephone number for borrowers who wish to
36 discuss options for avoiding foreclosure with their mortgagee,
37 *trustee*, beneficiary, or authorized agent.

38 (D) The toll-free telephone number made available by HUD to
39 find a HUD-certified housing counseling agency.

40 (h)

(g) Subdivisions (a), (c), and ~~(e)~~ (f) shall not apply if any of the following occurs:

(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees, trustees, or beneficiaries.

(3) A case has been filed by the borrower under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.

(4) *The borrower has completed participation in the Facilitated Mortgage Workout Program, and participation did not result in a mortgage loan modification, or other result mutually agreed to by the borrower and the mortgagee, trustee, beneficiary, or authorized agent.*

~~(i)~~

(h) This section shall apply only to mortgages or deeds of trust recorded from January 1, 2003, to December 31, 2007, inclusive, that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this subdivision, “owner-occupied” means that the residence is the principal residence of the borrower as indicated to the lender in loan documents.

(i) *For purposes of this section, a “borrower” includes a mortgagor or trustor.*

(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. *Article 1.7 (commencing with Section 2946) is added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, to read:*

Article 1.7. Facilitated Mortgage Workout Program

2946. *For purposes of this article:*

1 (a) “Administrator” means the administrator of the Facilitated
2 Mortgage Workout (FMW) Program.

3 (b) “Borrower” includes a mortgagor, trustor, or owner of the
4 residential real estate property described in the notice of default
5 sent pursuant to Section 2924.

6 (c) “Meaningful participation” shall be defined as the following:

7 (1) Attendance at all conciliation sessions.

8 (2) Presentation of all required documents and payment of all
9 required fees.

10 (d) “Residential real estate property” means residential real
11 property consisting of one- to four-family dwelling units.
12 Owner-occupied condominiums shall be considered residential
13 real estate property within the scope of this program, regardless
14 of the number of family dwelling units in any single homeowners’
15 association, complex, or community.

16 2946.1. (a) This article shall apply if all of the following
17 conditions exist:

18 (1) The loan originated prior to January 1, 2009.

19 (2) The loan at issue is the first mortgage or deed of trust
20 secured by the property.

21 (3) The loan is secured by residential real property that is
22 occupied by the borrower as the borrower’s principal residence.

23 (4) The unpaid principal balance of the mortgage is not more
24 than seven hundred twenty-nine thousand, seven hundred fifty
25 dollars (\$729,750).

26 (5) A notice of default has been filed on the property pursuant
27 to Section 2924 or the borrower has received notice pursuant to
28 paragraph (2) of subdivision (a) of Section 2923.5.

29 (b) Chapter 2 (commencing with Section 1115) of Division 9
30 and Section 703.5 of the Evidence Code shall apply to a
31 conciliation session conducted pursuant to this article, except that,
32 in the event of a conflict, the specific provisions of this article shall
33 prevail.

34 (c) This article shall not apply if a mortgagee, trustee,
35 beneficiary, or authorized agent has either of the following:

36 (1) Written evidence documenting a personal face-to-face
37 meeting with the borrower for the purpose of discussing loan
38 modification or foreclosure avoidance options.

39 (2) Written evidence documenting that the borrower has been
40 offered a loan modification that would establish a ration of the

1 *borrower's housing-related debt to the borrower's gross income*
2 *of 38 percent or less through some combination of the following*
3 *features:*

4 *(i) An interest rate reduction for a fixed term of at least five*
5 *years.*

6 *(ii) An extension of the mortgage term, not to exceed 40 years*
7 *from the original date of the loan.*

8 *(iii) Deferral of a portion of the principal amount of the unpaid*
9 *principal balance until maturity of the loan.*

10 *(iv) Reduction of the principal balance.*

11 *(v) A loan modification offer consistent with the Home*
12 *Affordable Modification Program.*

13 *(vi) Other alternatives that reduce the borrower's monthly*
14 *payment.*

15 *(d) This article shall not apply if the borrower has filed a*
16 *petition for bankruptcy and the proceedings have not been*
17 *finalized.*

18 2946.2. *(a) The administrator shall be appointed by the*
19 *Governor and confirmed by the Senate.*

20 *(b) The administrator shall do all of the following in order to*
21 *carry out this article:*

22 *(1) Implement rules and standards for choosing qualified neutral*
23 *conciliation officers.*

24 *(2) Implement rules and standards for ensuring the actual*
25 *impartiality and appearance of impartiality by qualified neutral*
26 *conciliation officers based on comparable professional standards*
27 *for mediators.*

28 *(3) Implement rules and standards for the removal of neutral*
29 *conciliation officers for good cause.*

30 *(4) Develop standards for forms and reports, as may be required*
31 *to implement the FMW Program.*

32 *(5) Require any additional training for neutral conciliation*
33 *officers to meet the goals of this article.*

34 *(6) Collect all moneys and fees as may be required to implement*
35 *this program.*

36 2946.3. *(a) A notice of default sent pursuant to Section 2924*
37 *to a borrower of residential real property that is subject to this*
38 *chapter shall include all of the following:*

39 *(1) (A) A separate notice, entitled "Opportunity to Meet*
40 *Face-to-Face with Your Lender/Loan Servicer and a Neutral*

1 *Professional in a Facilitated Mortgage Workout Program,”*
2 *advising the borrower of his or her right to participate in an FMW*
3 *Program to explore options for the borrower to avoid foreclosure.*
4 *This notice and all of the documents required to be included with*
5 *the notice of default shall be printed in large, boldface type and*
6 *shall be printed in English, Spanish, Chinese, Tagalog, and*
7 *Korean. This separate notice shall be sent to all borrowers of*
8 *record. This notice shall be recorded, in addition to the notice of*
9 *default, in the office of the appropriate county recorder.*

10 (B) *The notice described in subparagraph (A) shall do all of*
11 *the following:*

12 (i) *Explain the requirements for participation in the FMW*
13 *Program and advise the borrower of the procedures that are to*
14 *be followed to make an election to participate in the program.*

15 (ii) *Include the name, address, telephone number, facsimile*
16 *number, and e-mail address of the mortgagee, trustee, beneficiary,*
17 *or authorized agent, and the administrator of the FMW Program,*
18 *as well as ten or more independent local housing counseling*
19 *agencies that are approved by the United States Department of*
20 *Housing and Urban Development. The counseling agency shall*
21 *not receive any compensation, either directly or indirectly, from*
22 *the mortgagee, trustee, beneficiary or authorized agent, or from*
23 *any other person or entity involved in originating or servicing the*
24 *mortgage. This subdivision does not prevent a counseling agency*
25 *from receiving financial assistance that is provided by the lender*
26 *as part of charitable or philanthropic activities.*

27 (2) *Three copies of an election form, as developed and approved*
28 *by the administrator of the FMW Program, upon which the*
29 *borrower may indicate his or her election to either participate in,*
30 *or waive participation in, the FMW Program.*

31 (3) *Two separate envelopes, one addressed to the mortgagee,*
32 *trustee, beneficiary, or authorized agent and one addressed to the*
33 *administrator of the FMW Program, for use by the borrower to*
34 *advise the mortgagee, trustee, beneficiary, or authorized agent*
35 *and the administrator of the borrower’s election to participate in*
36 *the FMW Program.*

37 (b) *This section shall not apply to borrowers who have*
38 *previously completed the FMW Program with respect to the loan*
39 *at issue.*

1 2946.4. (a) *If the borrower elects to participate in the FMW*
2 *Program, the borrower shall complete the election form and mail*
3 *a copy of the election form to the mortgagee, trustee, beneficiary,*
4 *or authorized agent and to the administrator not later than 30*
5 *calendar days after receipt of the notice of default. The election*
6 *form shall be sent by certified mail, return receipt requested.*

7 (b) *The administrator may allow the borrower to elect to*
8 *participate in the FMW Program by completing the election form*
9 *on an Internet Web site, by submitting the form via e-mail, or by*
10 *completing the form over the telephone. The administrator shall*
11 *maintain a platform that responsibly records and gives the*
12 *borrower a hard copy record of his or her election to participate*
13 *in the FMW Program and that record shall be in compliance with*
14 *recognizable standards for recording and storing critical electronic*
15 *information.*

16 (c) *Within 15 days of requesting to participate in the FMW*
17 *Program, the borrower shall submit all of the following to the*
18 *administrator:*

19 (1) *Tax returns filed for the prior tax year, if the borrower was*
20 *required to file a tax return for that year.*

21 (2) *Payroll or other income verification for the previous two*
22 *months.*

23 (3) *First deposit of funds in accordance with Section 2946.7.*

24 (4) *A letter describing the financial hardship that prevents the*
25 *borrower from being able to afford his or her current mortgage*
26 *payment.*

27 (d) *Within 15 days of receiving notice that the borrower has*
28 *elected to participate in the FMW Program, the mortgagee, trustee,*
29 *beneficiary, or authorized agent shall submit all of the following*
30 *documents to the administrator:*

31 (1) *The applicable pooling and service agreement, if that*
32 *agreement limits or prohibits modification.*

33 (2) *Documentary evidence of the terms of the loan and the*
34 *borrower's payment history.*

35 (3) *A recent appraisal report on the property.*

36 (4) *Documentary evidence of current ownership or chain of*
37 *custody of the mortgage note.*

38 (5) *The net present value formula that the mortgagee, trustee,*
39 *beneficiary, or authorized agent uses.*

1 (e) All documents submitted by the parties shall be kept
2 confidential by the administrator and the neutral conciliation
3 officer.

4 (f) When a borrower has elected to participate in the FMW
5 Program, the timelines set forth in Section 2924 shall be suspended
6 for the duration of, and no further action may be taken to exercise
7 the power of sale until the completion of, the FMW Program, as
8 evidenced by the neutral conciliation officer's final report as
9 described in Section 2946.14.

10 2946.5. A neutral conciliation officer shall be compensated by
11 the administrator, from payment made by the parties in advance
12 of the conciliation session, for his or her services at a reasonable
13 hourly rate to be determined by the administrator. This
14 compensation shall initially be paid by the mortgagee, trustee,
15 beneficiary, or authorized agent and, in the event that the mortgage
16 loan is modified, the borrower shall reimburse the mortgagee,
17 trustee, beneficiary, or authorized agent for one-half of the total
18 compensation paid to the neutral conciliation officer. The
19 borrower's share of the neutral conciliation officer's fees may be
20 added to the principal balance of the loan if requested by the
21 borrower. If the parties' efforts to modify the loan fail and the
22 property is sold, the mortgagee, trustee, beneficiary, or authorized
23 agent, alone, shall be responsible for the expense of the neutral
24 conciliation officer's fees.

25 2946.6. (a) Upon receipt of a borrower's form whereby he or
26 she elects to participate in the FMW Program the administrator
27 shall nominate an individual from a list of qualified neutral
28 conciliation officers available to serve in the county in which the
29 property is located to act as the neutral conciliation officer for the
30 borrower and the mortgagee, trustee, beneficiary, or authorized
31 agent. The neutral conciliation officer shall contact the parties
32 within 15 days of his or her nomination to disclose any information
33 potentially affecting his or her impartiality, including any past,
34 present, and currently expected interests, relationships, and
35 affiliations of a person, professional, or financial nature, and
36 provide the parties an opportunity to object to the nomination
37 within 15 days. If neither party objects, the neutral conciliation
38 officer shall promptly schedule the first conciliation session of the
39 FMW Program. If the parties are unable to agree on a neutral
40 conciliation officer after two nominees, the administrator shall

1 randomly appoint a neutral conciliation officer from the list of
2 qualified individuals.

3 (b) (1) The administrator shall notify the mortgagee, trustee,
4 beneficiary, or authorized agent of the borrower's election to
5 participate in the FMW Program within 15 days of receipt of the
6 borrower's election to participate in the program. The mortgagee,
7 trustee, beneficiary, or authorized agent shall submit an
8 administrative fee of five hundred dollars (\$500), as well as a
9 minimum deposit in the amount of six hundred dollars (\$600) to
10 be applied toward conciliation fees and all required
11 documentation, to the administrator within 10 days of the
12 administrator's notification of the borrower's election. In the event
13 that the mortgage loan is modified, as part of the modification
14 plan, the borrower shall reimburse the mortgagee, trustee,
15 beneficiary, or authorized agent one-half of the total administration
16 and conciliation fees incurred in the matter as partial
17 reimbursement according to the same terms as set forth in Section
18 2946.5. In the event that the parties' efforts to modify the loan fail
19 and the property is sold by the mortgagee, trustee, beneficiary, or
20 authorized agent, the mortgagee, trustee, beneficiary, or authorized
21 agent, alone, shall be responsible for the program fees.

22 (2) Failure of the mortgagee, trustee, beneficiary, or authorized
23 agent to deposit the fees within 10 days of the administrator's
24 notification of the borrower's election to participate shall result
25 in a stay of foreclosure proceedings and delay of the FMW
26 Program until the fees are deposited with an additional penalty
27 of one hundred dollars (\$100) per day for each day after the
28 deadline that the fees have not been deposited.

29 2946.7. Any borrower who elects to participate in the FMW
30 Program shall deposit with the administrator 50 percent of the
31 current mortgage payment every month during participation in
32 the FMW Program. The first monthly deposit shall be made within
33 10 days after requesting participation in the FMW Program. If
34 the borrower fails to comply with these terms, the borrower's
35 election shall be deemed to be canceled and the FMW Program
36 shall be deemed to be completed.

37 2946.8. A borrower who participates in the FMW Program
38 shall not be required, as a condition of participation, or as a
39 condition of acceptance of a modification, to waive any rights and
40 remedies that may otherwise be available.

1 2946.9. *Unless a mutually agreeable resolution is achieved*
2 *sooner, the parties shall meaningfully participate in one or more*
3 *facilitated workout sessions for no less than four hours. By mutual*
4 *agreement, the parties may extend their participation beyond the*
5 *minimum period set forth in this section. Upon the completion of*
6 *the minimum period or other agreed period under this section, the*
7 *parties may choose to continue their participation or terminate*
8 *their efforts.*

9 2946.10. (a) *The borrower or borrowers and mortgagee,*
10 *trustee, beneficiary, or authorized agent shall attend the FMW*
11 *Program sessions in person.*

12 (b) *In the event of exigent circumstances, the administrator may*
13 *allow either party to be represented by a person with a power of*
14 *attorney or other written authorization to represent and bind the*
15 *party. In addition, each party may be represented by an attorney*
16 *or housing counselor.*

17 (c) *No request for a continuance of a facilitated workout session*
18 *may be granted, except upon showing of exceptional circumstances.*
19 *A request shall be made to the administrator, at least 15 days prior*
20 *to the scheduled conciliation session detailing the exceptional*
21 *circumstances that require the continuance.*

22 (d) *The borrower and mortgagee, trustee, beneficiary, or*
23 *authorized agent may agree on the terms of a loan modification*
24 *which may include any or all of the following features:*

25 (1) *An interest rate reduction for a fixed term of at least five*
26 *years.*

27 (2) *An extension of the mortgage term, not to exceed 40 years*
28 *from the original date of the loan.*

29 (3) *Deferral of a portion of the principal amount of the unpaid*
30 *principal balance until maturity of the loan.*

31 (4) *Reduction of the principal balance.*

32 (5) *Compliance with a federally mandated loan modification*
33 *program.*

34 (6) *Other alternatives that may reduce the borrower's monthly*
35 *payment to 31 percent or less of the borrower's debt-to-income*
36 *ratio and that are designed to meet long-term sustainability for*
37 *the borrower.*

38 (7) *Nothing in this section shall be construed to prevent a*
39 *creditor from offering or accepting alternatives in writing to*
40 *foreclosure, such as a short sale or deed-in-lieu of foreclosure,*

1 *but only if the borrower requests these alternatives, rejects a loan*
2 *modification offered pursuant to this section, or does not qualify*
3 *for a loan modification pursuant to this section.*

4 *(e) If a borrower has failed to meaningfully participate in the*
5 *FMW Program, the FMW Program shall be suspended. If the*
6 *borrower cures the noncompliance to the satisfaction of the*
7 *administrator within 10 days of notice of failure to comply, the*
8 *administrator shall rescind suspension of the conciliation sessions*
9 *and the FMW Program will be continued. If the borrower fails to*
10 *cure noncompliance, the FMW program shall be suspended and*
11 *unused conciliation fees shall be refunded to the mortgagee,*
12 *trustee, beneficiary, or authorized agent.*

13 *(f) If a mortgagee, trustee, beneficiary, or authorized agent fails*
14 *to meaningfully participate in the FMW Program, the FMW*
15 *Program shall be suspended. During the suspension of the program*
16 *for failure to meaningfully participate, the mortgagee, trustee,*
17 *beneficiary, or authorized agent may not pursue further foreclosure*
18 *actions until such time as the mortgagee, trustee, beneficiary, or*
19 *authorized agent cures the noncompliance.*

20 *2946.11. A mortgagee, trustee, beneficiary, or authorized agent*
21 *shall not report negative credit information about a borrower to*
22 *a credit reporting agency if the borrower has successfully*
23 *participated in the FMW Program and a mortgage loan*
24 *modification has been accepted.*

25 *2946.12. A borrower shall not be responsible for fees, late*
26 *payment charges, or other monetary penalties while the FMW*
27 *Program or final report is pending.*

28 *2946.13. The neutral conciliation officer shall use reasonable*
29 *efforts to ensure that each FMW Program is completed within 60*
30 *calendar days of the conciliator's nomination.*

31 *2946.14. (a) The neutral conciliation officer's final report*
32 *shall be submitted to the administrator within 10 days of*
33 *completion of the conciliation session and shall state whether a*
34 *mutually acceptable resolution was reached between the parties.*

35 *(b) The final report shall be sent by first-class mail or via*
36 *electronic means to the borrower, mortgagee, trustee, beneficiary,*
37 *or authorized agent, and the administrator and shall include a*
38 *statement that the FMW Program has been completed.*

1 2946.15. (a) (1) *The administrator shall report quarterly to*
2 *the Legislature regarding the performance of the FMW Program,*
3 *including all of the following information:*
4 (A) *The number of homeowners who attend a conciliation*
5 *session prior to notice of default.*
6 (B) *The number of homeowners who attend a conciliation*
7 *session after receiving a notice of default.*
8 (C) *The number of conciliation sessions suspended because of*
9 *lack of meaningful participation by the borrower.*
10 (D) *The number of conciliation sessions suspended because of*
11 *lack of meaningful participation on the part of the mortgagee,*
12 *trustee, beneficiary, or authorized agent.*
13 (E) *The number of conciliation sessions that result in a loan*
14 *modification.*
15 (F) *The number of conciliation sessions that result in a solution*
16 *other than a loan modification.*
17 (2) (A) *The requirement for submitting a report pursuant to*
18 *paragraph (1) is inoperative on January 1, 2015, pursuant to*
19 *Section 10231.5 of the Government Code.*
20 (B) *A report to be submitted pursuant to paragraph (1) shall*
21 *be submitted in compliance with Section 9795 of the Government*
22 *Code.*
23 (b) *Each mortgagee, trustee, beneficiary, or authorized agent*
24 *participating in the FMW Program shall post public data reports*
25 *on a quarterly basis on its Internet Web site detailing the following:*
26 (1) *The number of loans that have been modified through the*
27 *FMW Program and the type of modification.*
28 (2) *The final disposition of loans that were in the FMW Program*
29 *but not modified.*
30 (3) *The final disposition of loans that did not go through in the*
31 *FMW Program.*
32 (A) *The type of loans in a portfolio serviced by others, delineated*
33 *by prime, subprime, and nontraditional.*
34 (B) *The loans in a portfolio or serviced by others that are*
35 *securitized.*
36 (C) *The number of home retention actions.*
37 (D) *Redefault rates for portfolio loans and loans serviced for*
38 *others.*
39 (E) *The default rates for portfolio loans and loans serviced for*
40 *others.*

1 (F) *The default rates of loans modified in 2008 by changes in*
2 *payment.*

3 (G) *Newly initiated home retention actions compared with*
4 *foreclosure actions.*

5 (H) *Completed foreclosures and other home forfeiture actions.*

6 (I) *The overall portfolio performance by percentage.*

7 (J) *The performance of government guaranteed loans, by*
8 *percentage.*

9 (K) *The performance of government sponsored enterprise loans,*
10 *by percentage.*

11 (L) *Seriously delinquent mortgages, by percentage.*

12 (M) *Home Affordable Modification Program actions by investor*
13 *and risk category.*

14 (N) *Changes in loan terms made by modifications during 2009.*

15 (O) *Changes in monthly principal and interest payments owing*
16 *to modification, by the number of modifications.*

17 (P) *The number of modified loans, 30 or more days delinquent.*

18 (Q) *The number of modified loans, 60 or more days delinquent.*

19 (R) *The number of modified loans, 90 or more days delinquent.*

20 2946.16. *Nothing in this article shall prevent a mortgagee,*
21 *trustee, beneficiary, or authorized agent from requesting mediation*
22 *under the FMW program.*

23 2946.17. *This article shall become inoperative on January 1,*
24 *2014.*

25 SEC. 3. *The provisions imposing obligations upon borrowers,*
26 *mortgagees, trustees, beneficiaries, and authorized agents under*
27 *this act shall become operative only upon issuance of a notice to*
28 *the Governor by the administrator declaring that the rules,*
29 *standards, forms, training, lists, collection, and payment provisions*
30 *required by Section 2946.2 have been completed such that the*
31 *administrator has the capacity to make the program available to*
32 *any borrower in every county of the state who desires to*
33 *participate. The notice required under this section shall be sent*
34 *to the Chair of the Assembly Committee on Judiciary and the Chair*
35 *of the Senate Committee on Judiciary, as well as the Chair of the*
36 *Assembly Committee on Banking and Finance and the Chair of the*
37 *Senate Committee on Banking, Finance and Insurance, and*
38 *posted on the Internet Web site of the administrator.*

39 SEC. 4. *If the Commission on State Mandates determines that*
40 *this act contains costs mandated by the state, reimbursement to*

1 *local agencies and school districts for those costs shall be made*
2 *pursuant to Part 7 (commencing with Section 17500) of Division*
3 *4 of Title 2 of the Government Code.*

4 *SEC. 5. This act shall become operative only upon the receipt*
5 *of federal funding for all costs.*

6 ~~SECTION 1. Section 2923.5 of the Civil Code is amended to~~
7 ~~read:~~

8 ~~2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized~~
9 ~~agent may not file a notice of default pursuant to Section 2924~~
10 ~~until 30 days after initial contact is made as required by paragraphs~~
11 ~~(2) and (3) or 30 days after satisfying the due diligence~~
12 ~~requirements as described in subdivision (f).~~

13 ~~(2) (A) A mortgagee, trustee, beneficiary, or authorized agent~~
14 ~~shall inform the borrower, via certified mail accompanying a notice~~
15 ~~of delinquency, that the borrower may request to participate in the~~
16 ~~Mediated Mortgage Workout Program under Article 1.7~~
17 ~~(commencing with Section 2946). The notice shall include, in~~
18 ~~boldface type, the telephone number, e-mail address, and Internet~~
19 ~~Web site for the administrator of the Mediated Mortgage Workout~~
20 ~~Program.~~

21 ~~(B) (i) A borrower shall have 30 days from receipt of the notice~~
22 ~~to request participation in the Mediated Mortgage Workout~~
23 ~~Program.~~

24 ~~(ii) If a borrower chooses to participate in the Mediated~~
25 ~~Mortgage Workout Program, the requirements in paragraph (3)~~
26 ~~shall be deemed to be completed.~~

27 ~~(iii) A notice of default may not be filed while the borrower~~
28 ~~participates in the Mediated Mortgage Workout Program under~~
29 ~~Article 1.7 (commencing with Section 2946).~~

30 ~~(3) A mortgagee, trustee, beneficiary, or authorized agent shall~~
31 ~~contact the borrower in person or by telephone in order to assess~~
32 ~~the borrower's financial situation and explore options for the~~
33 ~~borrower to avoid foreclosure. During the initial contact, the~~
34 ~~mortgagee, trustee, beneficiary, or authorized agent shall advise~~
35 ~~the borrower that he or she has the right to request a subsequent~~
36 ~~meeting and, if requested, the mortgagee, trustee, beneficiary, or~~
37 ~~authorized agent shall schedule the meeting to occur within 14~~
38 ~~days. The assessment of the borrower's financial situation and~~
39 ~~discussion of options may occur during the first contact, or at the~~
40 ~~subsequent meeting scheduled for that purpose. In either case, the~~

1 borrower shall be provided the toll-free telephone number made
2 available by the United States Department of Housing and Urban
3 Development (HUD) to find a HUD-certified housing counseling
4 agency. Any meeting may occur telephonically.

5 (b) A notice of default filed pursuant to Section 2924 shall
6 include a declaration that the mortgagee, trustee, beneficiary, or
7 authorized agent has contacted the borrower, has tried with due
8 diligence to contact the borrower as required by this section, or
9 that no contact was required pursuant to subdivision (g).

10 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
11 already filed the notice of default prior to the enactment of this
12 section and did not subsequently file a notice of rescission, then
13 the mortgagee, trustee, beneficiary, or authorized agent shall, as
14 part of the notice of sale filed pursuant to Section 2924f, include
15 a declaration that either:

16 (1) States that the borrower was contacted to assess the
17 borrower's financial situation and to explore options for the
18 borrower to avoid foreclosure.

19 (2) Lists the efforts made, if any, to contact the borrower in the
20 event no contact was made.

21 (d) A mortgagee's, trustee's, beneficiary's, or authorized agent's
22 loss mitigation personnel may participate by telephone during any
23 contact required by this section.

24 (e) A borrower may designate, with consent given in writing,
25 a HUD-certified housing counseling agency, attorney, or other
26 adviser to discuss with the mortgagee, trustee, beneficiary, or
27 authorized agent, on the borrower's behalf, the borrower's financial
28 situation and options for the borrower to avoid foreclosure. That
29 contact made at the direction of the borrower shall satisfy the
30 contact requirements of paragraph (2) of subdivision (a). Any loan
31 modification or workout plan offered at the meeting by the
32 mortgagee, trustee, beneficiary, or authorized agent is subject to
33 approval by the borrower.

34 (f) A notice of default may be filed pursuant to Section 2924
35 when a mortgagee, trustee, beneficiary, or authorized agent has
36 not contacted a borrower as required by paragraph (2) of
37 subdivision (a) provided that the failure to contact the borrower
38 occurred despite the due diligence of the mortgagee, trustee,
39 beneficiary, or authorized agent. For purposes of this section, "due
40 diligence" shall require and mean all of the following:

1 ~~(1) A mortgagee, trustee, beneficiary, or authorized agent shall~~
2 ~~first attempt to contact a borrower by sending a first-class letter~~
3 ~~that includes the toll-free telephone number made available by~~
4 ~~HUD to find a HUD-certified housing counseling agency.~~

5 ~~(2) (A) After the letter has been sent, the mortgagee, trustee,~~
6 ~~beneficiary, or authorized agent shall attempt to contact the~~
7 ~~borrower by telephone at least three times at different hours and~~
8 ~~on different days. Telephone calls shall be made to the primary~~
9 ~~telephone number on file.~~

10 ~~(B) A mortgagee, trustee, beneficiary, or authorized agent may~~
11 ~~attempt to contact a borrower using an automated system to dial~~
12 ~~borrowers, provided that, if the telephone call is answered, the call~~
13 ~~is connected to a live representative of the mortgagee, trustee,~~
14 ~~beneficiary, or authorized agent.~~

15 ~~(C) A mortgagee, trustee, beneficiary, or authorized agent~~
16 ~~satisfies the telephone contact requirements of this paragraph if it~~
17 ~~determines, after attempting contact pursuant to this paragraph,~~
18 ~~that the borrower's primary telephone number and secondary~~
19 ~~telephone number or numbers on file, if any, have been~~
20 ~~disconnected.~~

21 ~~(3) If the borrower does not respond within two weeks after the~~
22 ~~telephone call requirements of paragraph (2) have been satisfied,~~
23 ~~the mortgagee, beneficiary, or authorized agent shall then send a~~
24 ~~certified letter, with return receipt requested.~~

25 ~~(4) The mortgagee, trustee, beneficiary, or authorized agent~~
26 ~~shall provide a means for the borrower to contact it in a timely~~
27 ~~manner, including a toll-free telephone number that will provide~~
28 ~~access to a live representative during business hours.~~

29 ~~(5) The mortgagee, trustee, beneficiary, or authorized agent has~~
30 ~~posted a prominent link on the homepage of its Internet Web site,~~
31 ~~if any, to the following information:~~

32 ~~(A) Options that may be available to borrowers who are unable~~
33 ~~to afford their mortgage payments and who wish to avoid~~
34 ~~foreclosure, and instructions to borrowers advising them on steps~~
35 ~~to take to explore those options.~~

36 ~~(B) A list of financial documents borrowers should collect and~~
37 ~~be prepared to present to the mortgagee, beneficiary, or authorized~~
38 ~~agent when discussing options for avoiding foreclosure.~~

1 ~~(C) A toll-free telephone number for borrowers who wish to~~
2 ~~discuss options for avoiding foreclosure with their mortgagee,~~
3 ~~beneficiary, or authorized agent.~~

4 ~~(D) The toll-free telephone number made available by HUD to~~
5 ~~find a HUD-certified housing counseling agency.~~

6 ~~(g) Subdivisions (a), (c), and (f) shall not apply if any of the~~
7 ~~following occurs:~~

8 ~~(1) The borrower has surrendered the property as evidenced by~~
9 ~~either a letter confirming the surrender or delivery of the keys to~~
10 ~~the property to the mortgagee, trustee, beneficiary, or authorized~~
11 ~~agent.~~

12 ~~(2) The borrower has contracted with an organization, person,~~
13 ~~or entity whose primary business is advising people who have~~
14 ~~decided to leave their homes on how to extend the foreclosure~~
15 ~~process and avoid their contractual obligations to mortgagees or~~
16 ~~beneficiaries.~~

17 ~~(3) A case has been filed by the borrower under Chapter 7, 11,~~
18 ~~12, or 13 of Title 11 of the United States Code and the bankruptcy~~
19 ~~court has not entered an order closing or dismissing the bankruptcy~~
20 ~~case, or granting relief from a stay of foreclosure.~~

21 ~~(4) The borrower has completed participation in the Mediated~~
22 ~~Mortgage Workout Program, and participation did not result in a~~
23 ~~mortgage loan modification, or other result mutually agreed to by~~
24 ~~the borrower and the mortgagee, trustee, beneficiary, or authorized~~
25 ~~agent.~~

26 ~~(h) This section shall apply only to mortgages or deeds of trust~~
27 ~~recorded from January 1, 2003, to December 31, 2007, inclusive,~~
28 ~~that are secured by owner-occupied residential real property~~
29 ~~containing no more than four dwelling units. For purposes of this~~
30 ~~subdivision, “owner-occupied” means that the residence is the~~
31 ~~principal residence of the borrower as indicated to the lender in~~
32 ~~loan documents.~~

33 ~~(i) For purposes of this section, a “borrower” includes a~~
34 ~~mortgagor or trustor.~~

35 ~~(j) This section shall remain in effect only until January 1, 2013,~~
36 ~~and as of that date is repealed, unless a later enacted statute, that~~
37 ~~is enacted before January 1, 2013, deletes or extends that date.~~

38 SEC. 2.—Article 1.7 (commencing with Section 2946) is added
39 to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code,
40 to read:

1 Article 1.7. ~~Mediated Mortgage Workout Program~~

2
3 2946. ~~For purposes of this article:~~

4 (a) ~~“Administrator” means the administrator of the Mediated~~
5 ~~Mortgage Workout (MMW) Program.~~

6 (b) ~~“Borrower” includes a mortgagor, trustor, or owner of the~~
7 ~~residential real estate property described in the notice of default~~
8 ~~sent pursuant to Section 2924.~~

9 (c) ~~“Meaningful participation” shall be defined as the following:~~

10 (1) ~~Attendance at all mediation sessions.~~

11 (2) ~~Presentation of all required documents and payment of all~~
12 ~~required fees.~~

13 (d) ~~“Residential real estate property” means residential real~~
14 ~~property consisting of one- to four-family dwelling units.~~
15 ~~Owner-occupied condominiums shall be considered residential~~
16 ~~real estate property within the scope of this program, regardless~~
17 ~~of the number of family dwelling units in any single homeowners’~~
18 ~~association, complex, or community.~~

19 2946.1. ~~(a) This article shall apply to a loan secured by~~
20 ~~residential real property that is the primary residence of the~~
21 ~~borrower and for which a notice of default has been filed pursuant~~
22 ~~to Section 2924.~~

23 (b) ~~Chapter 2 (commencing with Section 1115) of Division 9~~
24 ~~and Section 703.5 of the Evidence Code shall apply to a mediation~~
25 ~~conducted pursuant to this article.~~

26 2946.2. ~~(a) The administrator shall be appointed by the~~
27 ~~Governor and confirmed by the Senate.~~

28 (b) ~~The administrator shall do all of the following in order to~~
29 ~~carry out this article:~~

30 (1) ~~Implement rules and standards for choosing qualified~~
31 ~~mediators.~~

32 (2) ~~Implement rules and standards for the removal of mediators~~
33 ~~for good cause.~~

34 (3) ~~Develop standards for forms and reports, as may be required~~
35 ~~to implement the MMW Program.~~

36 (4) ~~Require additional training for mediators to meet the goals~~
37 ~~of this article.~~

38 (5) ~~Collect all moneys and fees as may be required to implement~~
39 ~~this program.~~

1 ~~2946.3.— (a) A notice of default sent pursuant to Section 2924~~
2 ~~to a borrower of residential real property that is subject to this~~
3 ~~chapter shall include all of the following:~~

4 ~~(1) (A) A separate notice, entitled “Opportunity to Meet~~
5 ~~Face-to-Face with Your Lender/Loan Servicer and a Neutral~~
6 ~~Professional in a Mediated Mortgage Workout Program,” advising~~
7 ~~the borrower of his or her right to participate in an MMW Program~~
8 ~~to explore options for the borrower to avoid foreclosure. This~~
9 ~~notice and all of the documents required to be included with the~~
10 ~~notice of default shall be printed in large, boldface type and shall~~
11 ~~be printed in English, Spanish, Chinese, Tagalog, and Korean.~~
12 ~~This separate notice shall be sent to all borrowers of record. This~~
13 ~~notice shall be recorded, in addition to the notice of default, in the~~
14 ~~office of the appropriate county recorder.~~

15 ~~(B) The notice described in subparagraph (A) shall do all of the~~
16 ~~following:~~

17 ~~(i) Explain the requirements for participation in the MMW~~
18 ~~Program and advise the borrower of the procedures that are to be~~
19 ~~followed to make an election to participate in the program.~~

20 ~~(ii) Include the name, address, telephone number, facsimile~~
21 ~~number, and e-mail address of the mortgagee, trustee, beneficiary,~~
22 ~~or authorized agent, and the administrator of the MMW Program,~~
23 ~~as well as two or more local housing counseling agencies that are~~
24 ~~approved by the United States Department of Housing and Urban~~
25 ~~Development.~~

26 ~~(iii) Advise the borrower that loan counselors are prohibited~~
27 ~~from collecting an advance fee.~~

28 ~~(2) Three copies of an election form, as developed and approved~~
29 ~~by the administrator of the MMW Program, upon which the~~
30 ~~borrower may indicate his or her election to either participate in,~~
31 ~~or waive participation in, the MMW Program.~~

32 ~~(3) Two separate envelopes, one addressed to the mortgagee,~~
33 ~~trustee, beneficiary, or authorized agent and one addressed to the~~
34 ~~administrator of the MMW Program, for use by the borrower to~~
35 ~~advise the mortgagee, trustee, beneficiary, or authorized agent and~~
36 ~~the administrator of the borrower’s election to participate in the~~
37 ~~MMW Program.~~

38 ~~(b) This section shall not apply to borrowers who have~~
39 ~~previously completed the MMW Program.~~

1 ~~2946.4. (a) If the borrower elects to participate in the MMW~~
2 ~~Program, the borrower shall complete the election form and mail~~
3 ~~a copy of the election form to the mortgagee, trustee, beneficiary,~~
4 ~~or authorized agent and to the administrator not later than 30~~
5 ~~calendar days after receipt of the notice of default. The election~~
6 ~~form shall be sent by certified mail, return receipt requested.~~

7 ~~(b) The administrator may allow the borrower to elect to~~
8 ~~participate in the MMW Program by completing the election form~~
9 ~~on an Internet Web site, by submitting the form via e-mail, or by~~
10 ~~completing the form over the telephone. The administrator shall~~
11 ~~maintain a platform that responsibly records and gives the borrower~~
12 ~~a hard copy record of his or her election to participate in the MMW~~
13 ~~Program and that record shall be in compliance with recognizable~~
14 ~~standards for recording and storing critical electronic information.~~

15 ~~(c) Within 10 days of requesting to participate in the MMW~~
16 ~~Program, the borrower shall submit all of the following to the~~
17 ~~administrator:~~

18 ~~(1) Tax returns filed for the prior tax year, if the borrower was~~
19 ~~required to file a tax return for that year.~~

20 ~~(2) Payroll or other income verification for the previous two~~
21 ~~months.~~

22 ~~(3) First deposit of funds in accordance with Section 2946.7.~~

23 ~~(d) Within 10 days of receiving notice that the borrower has~~
24 ~~elected to participate in the MMW Program, the mortgagee, trustee,~~
25 ~~beneficiary, or authorized agent shall submit all of the following~~
26 ~~documents to the administrator:~~

27 ~~(1) The applicable Pooling and Service Agreement, if any.~~

28 ~~(2) The loan application, loan origination documents, appraisal,~~
29 ~~and payment history.~~

30 ~~(3) The original note and assignments or certificate regarding~~
31 ~~a lost document.~~

32 ~~(4) Documentary evidence of current ownership or chain of~~
33 ~~custody of the mortgage note.~~

34 ~~(5) The net present value formula that the mortgagee, trustee,~~
35 ~~beneficiary, or authorized agent uses.~~

36 ~~(e) When a borrower has elected to participate in the MMW~~
37 ~~Program, the timelines set forth in Section 2924 shall be suspended~~
38 ~~for the duration of, and no further action may be taken to exercise~~
39 ~~the power of sale until the completion of, the MMW Program, as~~

1 evidenced by the mediator's final report as described in Section
2 2946.14.

3 2946.5. A mediator shall be compensated by the administrator,
4 from payment made by the parties in advance of the mediation,
5 for his or her services at the hourly rate of one hundred fifty dollars
6 (\$150). This compensation shall initially be paid by the mortgagee,
7 trustee, beneficiary, or authorized agent and, in the event that the
8 mortgage loan is modified, the borrower shall reimburse the
9 mortgagee, trustee, beneficiary, or authorized agent for one-half
10 of the total compensation paid to the mediator. The borrower's
11 share of the mediator's fees may be added to the principal balance
12 of the loan if requested by the borrower. If the parties' efforts to
13 modify the loan fail and the property is sold, the mortgagee, trustee,
14 beneficiary, or authorized agent, alone, shall be responsible for
15 the expense of the mediator's fees.

16 2946.6. (a) Upon receipt of a borrower's form whereby he or
17 she elects to participate in the MMW Program the administrator
18 shall randomly appoint an individual from a list of qualified
19 mediators available to serve in the county in which the property
20 is located to act as the mediator for the borrower and the mortgagee,
21 trustee, beneficiary, or authorized agent. The mediator shall contact
22 the parties within 15 days of his or her appointment to schedule
23 the first session of the MMW Program.

24 (b) (1) The administrator shall notify the mortgagee, trustee,
25 beneficiary, or authorized agent of the borrower's election to
26 participate in the MMW Program within 15 days of receipt of the
27 borrower's election to participate in the program. The mortgagee,
28 trustee, beneficiary, or authorized agent shall submit an
29 administrative fee of five hundred dollars (\$500), as well as a
30 minimum deposit in the amount of six hundred dollars (\$600) to
31 be applied toward mediation fees and all required documentation,
32 to the administrator within 10 days of the administrator's
33 notification of the borrower's election. In the event that the
34 mortgage loan is modified, as part of the modification plan, the
35 borrower shall reimburse the mortgagee, trustee, beneficiary, or
36 authorized agent two hundred fifty dollars (\$250) as partial
37 reimbursement of this fee according to the same terms as set forth
38 in Section 2946.5. In the event that the parties' efforts to modify
39 the loan fail and the property is sold by the mortgagee, trustee,
40 beneficiary, or authorized agent, the mortgagee, trustee,

1 beneficiary, or authorized agent, alone, shall be responsible for
2 the program fee.

3 (2) ~~Failure of the mortgagee, trustee, beneficiary, or authorized~~
4 ~~agent to deposit the fee within 10 days of the administrator's~~
5 ~~notification of the borrower's election to participate shall result in~~
6 ~~a stay of foreclosure proceedings and delay of the MMW Program~~
7 ~~until the fee is deposited with an additional penalty of one hundred~~
8 ~~dollars (\$100) per day for each day after the deadline that the fee~~
9 ~~has not been deposited.~~

10 2946.7. ~~Any borrower who elects to participate in the MMW~~
11 ~~Program shall deposit with the administrator 50 percent of the~~
12 ~~current mortgage payment every month during participation in the~~
13 ~~MMW Program. The first monthly deposit shall be made within~~
14 ~~10 days after requesting participation in the MMW Program. If~~
15 ~~the borrower fails to comply with these terms, the borrower's~~
16 ~~election shall be deemed to be canceled and the MMW Program~~
17 ~~shall be deemed to be completed.~~

18 2946.8. ~~A borrower who participates in the MMW Program~~
19 ~~shall not be required, as a condition of participation, or as a~~
20 ~~condition of acceptance of a modification, to waive any rights and~~
21 ~~remedies that may otherwise be available.~~

22 2946.10. (a) ~~The borrower or borrowers and mortgagee, trustee,~~
23 ~~beneficiary, or authorized agent shall attend the MMW Program~~
24 ~~sessions in person.~~

25 (b) ~~In the event of exigent circumstances, the administrator may~~
26 ~~allow either party to be represented by a person with a power of~~
27 ~~attorney or other written authorization to represent and bind the~~
28 ~~party. In addition, each party may be represented by an attorney~~
29 ~~or housing counselor. However, no attorney, other representative,~~
30 ~~or loan counselor appearing on behalf of the borrower may receive~~
31 ~~an advance fee for any services rendered in connection with the~~
32 ~~MMW Program.~~

33 (c) ~~No request for a continuance of an MMW Program session~~
34 ~~may be granted, except upon showing of extraordinary~~
35 ~~circumstances. A request shall be made to the administrator, at~~
36 ~~least 15 days prior to the scheduled mediation detailing the~~
37 ~~extraordinary circumstances that require the continuance. Any~~
38 ~~request for continuance that occurs within 15 days of the scheduled~~
39 ~~mediation shall be accompanied by a three-hundred-dollar (\$300)~~
40 ~~deposit to apply toward the mediator's fee. If the requested~~

1 continuance is granted, the administrator shall levy a fee of three
2 hundred dollars (\$300) for the benefit of the mediator.

3 (d) ~~The borrower and mortgagee, trustee, beneficiary, or~~
4 ~~authorized agent may agree on the terms of a loan modification~~
5 ~~which may include any or all of the following features:~~

6 (1) ~~An interest rate reduction for a fixed term of at least five~~
7 ~~years.~~

8 (2) ~~An extension of the mortgage term, not to exceed 40 years~~
9 ~~from the original date of the loan.~~

10 (3) ~~Deferral of a portion of the principal amount of the unpaid~~
11 ~~principal balance until maturity of the loan.~~

12 (4) ~~Reduction of the principal balance.~~

13 (5) ~~Compliance with a federally mandated loan modification~~
14 ~~program.~~

15 (6) ~~Other alternatives that may reduce the borrower's monthly~~
16 ~~payment to 31 percent or less of the borrower's debt-to-income~~
17 ~~ratio and that are designed to meet long-term sustainability for the~~
18 ~~borrower.~~

19 (7) ~~Nothing in this section shall be construed to prevent a~~
20 ~~creditor from offering or accepting alternatives in writing to~~
21 ~~foreclosure, such as a short sale or deed-in-lieu of foreclosure, but~~
22 ~~only if the borrower requests these alternatives, rejects a loan~~
23 ~~modification offered pursuant to this section, or does not qualify~~
24 ~~for a loan modification pursuant to this section.~~

25 (e) ~~If a borrower has failed to meaningfully participate in the~~
26 ~~MMW Program, the MMW Program shall be suspended. If the~~
27 ~~borrower cures the noncompliance to the satisfaction of the~~
28 ~~administrator within 10 days of notice of failure to comply, the~~
29 ~~administrator shall rescind suspension of the mediation sessions~~
30 ~~and the MMW Program will be continued.~~

31 (f) ~~If a mortgagee, trustee, beneficiary, or authorized agent fails~~
32 ~~to meaningfully participate in the MMW Program, the MMW~~
33 ~~Program shall be suspended. During the suspension of the program~~
34 ~~for failure to meaningfully participate, the mortgagee, trustee,~~
35 ~~beneficiary, or authorized agent may not pursue further foreclosure~~
36 ~~actions until such time as the mortgagee, trustee, beneficiary, or~~
37 ~~authorized agent cures the noncompliance.~~

38 2946.11. ~~A mortgagee, trustee, beneficiary, or authorized agent~~
39 ~~shall not report negative credit information about a borrower to a~~
40 ~~credit reporting agency if the borrower has successfully participated~~

1 in the MMW Program and a mortgage loan modification has been
2 accepted.

3 ~~2946.12. A borrower shall not be responsible for fees, late~~
4 ~~payment charges, or other monetary penalties while the MMW~~
5 ~~Program or final report is pending.~~

6 ~~2946.13. The mediator shall use reasonable efforts to ensure~~
7 ~~that each MMW Program is completed within 60 calendar days~~
8 ~~of the mediator's appointment.~~

9 ~~2946.14. (a) The mediator's final report shall be submitted to~~
10 ~~the administrator within 10 days of completion of the mediation~~
11 ~~and shall state whether a mutually acceptable resolution was~~
12 ~~reached between the parties.~~

13 ~~(b) The final report shall be sent by first-class mail or via~~
14 ~~electronic means to the borrower, mortgagee, trustee, beneficiary,~~
15 ~~or authorized agent, and the administrator and shall include a~~
16 ~~statement that the MMW Program has been completed.~~

17 ~~2946.15. (a) (1) The administrator shall report quarterly to~~
18 ~~the Legislature regarding the performance of the MMW Program,~~
19 ~~including all of the following information:~~

20 ~~(A) The number of homeowners who attend mediation prior to~~
21 ~~notice of default.~~

22 ~~(B) The number of homeowners who attend mediation after~~
23 ~~receiving a notice of default.~~

24 ~~(C) The number of mediations suspended because of lack of~~
25 ~~meaningful participation by the borrower.~~

26 ~~(D) The number of mediations suspended because of lack of~~
27 ~~meaningful participation on the part of the mortgagee, trustee,~~
28 ~~beneficiary, or authorized agent.~~

29 ~~(E) The number of mediations that result in a loan modification.~~

30 ~~(F) The number of mediations that result in a solution other than~~
31 ~~a loan modification.~~

32 ~~(2) (A) The requirement for submitting a report pursuant to~~
33 ~~paragraph (1) is inoperative on January 1, 2015, pursuant to Section~~
34 ~~10231.5 of the Government Code.~~

35 ~~(B) A report to be submitted pursuant to paragraph (1) shall be~~
36 ~~submitted in compliance with Section 9795 of the Government~~
37 ~~Code.~~

38 ~~(b) Each mortgagee, trustee, beneficiary, or authorized agent~~
39 ~~participating in the MMW Program shall post public data reports~~
40 ~~on a quarterly basis on its Internet Web site detailing the following:~~

1 ~~(1) The number of loans that have been modified through the~~
2 ~~MMW Program and the type of modification.~~

3 ~~(2) The final disposition of loans that were in the MMW~~
4 ~~Program but not modified.~~

5 ~~(3) The final disposition of loans that did not go through in the~~
6 ~~MMW Program.~~

7 ~~(A) The type of loans in a portfolio serviced by others,~~
8 ~~delineated by prime, subprime, and nontraditional.~~

9 ~~(B) The loans in a portfolio or serviced by others that are~~
10 ~~securitized.~~

11 ~~(C) The number of home retention actions.~~

12 ~~(D) Redefault rates for portfolio loans and loans serviced for~~
13 ~~others.~~

14 ~~(E) The default rates for portfolio loans and loans serviced for~~
15 ~~others.~~

16 ~~(F) The default rates of loans modified in 2008 by changes in~~
17 ~~payment.~~

18 ~~(G) Newly initiated home retention actions compared with~~
19 ~~foreclosure actions.~~

20 ~~(H) Completed foreclosures and other home forfeiture actions.~~

21 ~~(I) The overall portfolio performance by percentage.~~

22 ~~(J) The performance of government guaranteed loans, by~~
23 ~~percentage.~~

24 ~~(K) The performance of government sponsored enterprise loans,~~
25 ~~by percentage.~~

26 ~~(L) Seriously delinquent mortgages, by percentage.~~

27 ~~(M) Home Affordable Modification Program actions by investor~~
28 ~~and risk category.~~

29 ~~(N) Changes in loan terms made by modifications during 2009.~~

30 ~~(O) Changes in monthly principal and interest payments owing~~
31 ~~to modification, by the number of modifications.~~

32 ~~(P) The number of modified loans, 30 or more days delinquent.~~

33 ~~(Q) The number of modified loans, 60 or more days delinquent.~~

34 ~~(R) The number of modified loans, 90 or more days delinquent.~~

35 ~~SEC. 3. If the Commission on State Mandates determines that~~
36 ~~this act contains costs mandated by the state, reimbursement to~~
37 ~~local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O